No. 80-525

In The

Supreme Court of the United States

October Term, 1980

ROBERT BUSCHMANN,

Petitioner,

vs.

THE UNITED NEW YORK SANDY HOOK PILOTS' ASSOCIATION AND THE BOARD OF COMMISSIONERS OF PILOTS,

Respondents.

On Petition for a Writ of Certiorari to the Court of Appeals of the State of New York

REPLY BRIEF FOR PETITIONER

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To the Honorable, Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petitioner Robert Buschmann respectfully submits this brief in reply to certain arguments first raised by respondent The United New York Sandy Hook Pilots' Association in its brief in opposition to the petitioner's petition for a writ of certiorari to the Court of Appeals of the State of New York.

ARGUMENT

In its brief in opposition to the petition, the respondent United New York Sandy Hook Pilots' Association (hereinafter "Association") specifically cites a meeting between the petitioner's attorney and the respondent's Executive Committee, which it glibly characterizes as a "hearing" (B4).* However, the actual circumstances of that meeting are not explained nor is it ever mentioned in respondent's argument. In fact, the respondents have blatantly mischaracterized as a "hearing" what was in actuality a settlement conference which was not even attended by the petitioner. This notation of a settlement meeting appears to be an attempt by the respondents to leave this Court with the impression that Buschmann was actually afforded a hearing or, at the very least, color the case against the petitioner. Such an attempt is both inexcusable and reprehensible.

The meeting to which the respondents refer was held after the petitioner had already been discharged. The petitioner's attorneys asked to meet with the Executive Committee so that an equitable solution could be reached before the petitioner was forced to institute suit in court to regain his job. This meeting, which was not attended by the petitioner himself, was purely for the purposes of settlement and was not a "hearing" as the respondents would have the Court believe. While this meeting was raised as an affirmative defense by the respondent in its answer in the original Article 78 proceeding brought by the petitioner (R104-106), they never presented any evidence whatsoever to prove that affirmative defense, as was their burden under New York law. *See Besunder v. Coughlin,* 102 Misc. 2d 41, 422 N.Y.S. 2d 564 (Sup. Ct. Nassau County 1979); N.Y. Civ. Prac. Law §3018 (McKinney Supp. 1979-80). Indeed,

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* References to the Record on Appeal to the Court of Appeals in 1975 will be denoted "R___." References to the respondent's Brief in Opposition to the Petition for a Writ of Certiorari will be denoted "B___"

the respondent admitted in its original answer to Buschmann's petition pursuant to Article 78 that "there had been no hearing before the Commissioners on any complaint made against the petitioner." (R98). Finally, it should be noted that evidence of attempts to settle a claim is simply not admissible to prove the invalidity of that claim. *See Tenant v. Dudley*, 144 N.Y. 504 (1895); Proposed New York Code of Evidence §408 (1980); Federal Rules of Evidence §408 (1980).

Therefore, the petitioner implores this Court to ignore the respondent's reprehensible reference to the settlement meeting held between the Association's Executive Committee and the petitioner's attorneys after the petitioner had been discharged.

CONCLUSION

For the reasons set forth above and those already stated in the petitioner's original brief, the petition should be granted.

Respectfully submitted,

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